

Kevin W. Bates  
**HATCH, JAMES & DODGE, P.C.**  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
(801) 363-6363 Telephone  
(801) 363-6666 Facsimile

Mark P. Crockett  
Geoffrey D. Kressin  
**LUEDEKA, NEELY & GRAHAM, P.C.**  
900 S. Gay Street, Suite 1871  
Knoxville, TN 37902  
(865) 546-4305 - Telephone  
(865) 523-4478 - Facsimile

Attorneys for Defendant  
BLUMENTHAL DISTRIBUTING, INC.

FILED  
31 MAR 04 PM 4:04  
DISTRICT OF UTAH  
BY: RECEIVED

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION**

<b>LIFETIME PRODUCTS, INC.,</b> a Utah corporation, Plaintiff,  v.  <b>BLUMENTHAL DISTRIBUTING,</b> <b>INC.,</b> a California corporation Defendant.	Case No. 1:04-CV-00030 DAK  <b>MOTION TO DISMISS</b>  Judge: Hon. Dale A. Kimball
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Comes now the Defendant, Blumenthal Distributing, Inc. d/b/a Office Star Products, by and through counsel, and moves the Court to dismiss the Complaint filed against it pursuant to Fed. R. Civ. P. Rule 12(b)(2) and (3) upon the following grounds:

1. The Complaint fails to state a claim for which the requested relief may be granted.

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2. The Court has no personal jurisdiction over the Defendant.

3. The venue for this matter is improper.

The Complaint filed in this matter is solely for patent infringement. Patent cases are governed by the patent venue statute codified at 28 USC § 1400(b). It provides two independent bases for venue. The first basis is that a suit may be brought in the district in which the defendant resides. Under this basis the defendant resides where a court has personal jurisdiction. The Court has no personal jurisdiction over the Defendant in this matter. The second basis is that a suit may be brought where the defendant has committed acts of infringement AND has a regular established place of business. The Defendant has not committed any acts of infringement in this district and does not have a regular place of business in this district.

Accordingly, venue in this district is not proper and the Complaint should be dismissed.

In support of this Motion, Defendant relies upon the Memorandum of Law filed herewith, the Declaration of Barry N. Barsamian and the record as a whole.

WHEREFORE, Defendant, Blumenthal Distributing, Inc. d/b/a Office Star Products, moves the Court to dismiss the Complaint upon grounds aforesaid.

Dated this 31<sup>st</sup> Day of March, 2004.

Respectfully submitted,

Kevin W. Bates  
**HATCH, JAMES & DODGE**

Mark S. Graham  
Geoffrey D. Kressin  
Mark P. Crockett  
**LUEDEKA, NEELY & GRAHAM, P.C.**

By:   
Kevin W. Bates


Attorneys for Defendant  
Blumenthal Distributing, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing is being served by hand-delivery on counsel for Plaintiff, and by depositing the same as first class mail, postage prepaid, in an envelope addressed as follows:

Larry R. Laycock  
David R. Wright  
Robert E. Aycock  
WORKMAN NYDEGGER & SEELEY  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111

Dated: 3/31/04

  
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Kevin W. Bates

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